

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 19139 of 2007(C)

PETITIONER:

1. LEYON, AGED 42 YEARS, S/O. EDWARD,
KALLUVILA VEEDU, VALSA VILASAM,
PADAPPAKARA P.O., KARIKUZHI, KUNDARA, KOLLAM.
2. CHRISTUDAS, AGED 45 YEARS, S/O. PETER,
CHRISTURAJ BHAVAN, PADAPPAKARA P.O.,
KARIKUZHI, KUNDARA, KOLLAM.
3. JOY, AGED 41 YEARS, S/O. MARTIN,
JIJO NIVAS, PADAPPAKARA P.O., KARIKUZHI,
KUNDARA, KOLLAM.
4. SALIM, AGED 44 YEARS, S/O. MAKKARIOS,
ANOOP BHAVAN, KUMBALAM P.O., KUNDARA, KOLLAM.

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

RESPONDENTS:

1. DISTRICT COLLECTOR,
KOLLAM.
2. DIRECTOR OF FISHERIES,
KERALA, THIRUVANANTHAPURAM.
3. DEPUTY DIRECTOR OF FISHERIES,
KERALA, THIRUVANANTHAPURAM.
4. FISHERIES INSPECTOR,
THEVALLY, KOLLAM.
5. DISTRICT SUPERINTENDENT OF POLICE,
KOLLAM.
6. CIRCLE INSPECTOR OF POLICE,
KUNDARA.

BY GOVT.PLEADER SRI RAVINDRA BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29/06/2007, ALONG WITH WPC NO.17961 OF 2007, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & K.HEMA, JJ.

W.P. (C) .NOS.19139 & 17961 OF 2007

Dated this the 29th day of June, 2007

JUDGMENT

Raman, J.

Petitioners are traditional fishermen engaged in conducting fishing operations in Ashtamudi Kayal using "Othukkuvala with Padals". According to the petitioners, their sole livelihood is fishing by using "othukkuvala with padals" and they have been engaged in such profession of fishing by using the indigenous "othukkuvala with padals" from time immemorial. While they were continuing the fishing operations using such "othukkuvala with padals" the Police authorities under the orders of the Director of Fisheries took action against such fishing operations, as a result of which petitioners filed W.P.(C). No.17961/2007 seeking appropriate direction against the police officers and also the Officers of the Fisheries Department not to harass them in any manner of causing obstruction to the fishing operations conducted by them using "othukkuvala with padals". When the said writ petition came up for consideration, it was brought to the notice of this Court that there are rules prohibiting usage of "othukkuvala" and except on

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licence granted, fishing operations using "othukkuvala" is not permissible. Petitioners, thereafter, filed W.P.(C).No.19139/2007 producing Exts.P8 and P9 and seeking to quash the same. According to the petitioners, Ext.P9 order more particularly paragraph 2 thereof, is contrary to the statutory rule framed under Section 4 of the Travancore-Cochin Fisheries Act, 1950 permitting the use of "othukkuvala with padals" for fishing operations with the licence granted. Ext.P1 is a copy of the relevant rules issued by the Government in exercise of the powers conferred under Section 4 of the Travancore Cochin Fisheries Act, 1950. It is the case of the petitioner that they had been applying for licence though not in the prescribed form, the authorities were not issuing such licence. However, the petitioners were continuing the fishing operations using "othukkuvala with padals", which was however not interfered with by the authorities. All of a sudden they could not by force remove such "othukkuvala", which is the only bread-winning avocation known to the petitioners.

2. A counter affidavit is filed in W.P.(C).No.17961/2007 by the 3rd respondent therein, which is produced as Ext.P10 in W.P.(C).

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No.19139/2007. It is alleged that petitioners were depositing waste from outside and deposited in the Ashtamudi Kayal and they are depositing lorry loads of waste to the Ashtamudi Kayal. This waste includes dead body of the animals, chicken waste etc. which will seriously affect the fish population in Ashtamudi Kayal. Last month the Fisheries Department removed 400 units of "Thoopum Padalum" which comes to nearly 70 lorry loads of waste. It is also stated that the deposition of "Thoopum Padalum" in the Ashtamudi Kayal is still continuing, which is prohibited by rules. There are complaints from the registered fishermen to the District Collector with regard to the illegal fishing operations. It is on the basis of this complaint that the District Collector issued notice to remove all the illegal deposited "Thoopum Padalum" from the Ashtamudi Kayal. On verification it was found that nobody was issued licence for fishing by using "Thoopum Padalum", which is in fact, in violation of Section 3 of the Rules for Management and Control of Fishing in Government Backwater Rules, 1974. It is also stated that fishing by using "Thoopum Padalum" is deleterious to aquatic environment. However, it is admitted that the method of fishing by using

"othukkuvala with padals" is quite different from by using "Thoopum Padalum". In the former case, the branches of trees without any leaves were deposited in the back water within a limit of 30 feet circumference. It is only a temporary structure for aggregating fishes. The padals were kept in the lake only for a short period 1 to 2 weeks. In the case of "Thoopum Padalum" the branches of trees and bushes along with leaves were deposited in the lake to an area of 2 to 3 cents or even more and this is more or less permanent structure and periodically enriched with bunches of leaves.

3. From the averments made in the counter affidavit as noticed above, it admits of no doubt that the fishing by using "othukkuvala with padals" is not the same as fishing by using "Thoopum Padalum". Ext.P1 rules would clearly show that fishing by using of "othukkuvala with padals" are prohibited except on licence granted. Thus the usage of such "othukkuvala with padals" not exceeding 30 feet in circumference is allowed within a distance of 75 feet from the shore in the areas of the Ashtamudi Backwaters specified in the rule for which licence could be granted. A person who desires of getting a licence to conduct fishing by using "othukkuvala with padals" has

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therefore to submit an application in the prescribed format whereupon he has to appear in person before the Inspector of Fisheries, Quilon and take a licence in which the place and other restrictions for the operation of nets will be specified. Admittedly, the petitioners have not possessed any such licence. These rules were notified in the Official Gazette as early as in 1955 and continued to be in force. No stringent action was taken against the petitioners or other similarly situated persons, who were doing fishing operations without any valid licence. However, it does not mean that there is an implied permission granted in favour of the petitioners. Since the statutory rule clearly prohibits the fishing operations being conducted by using "othukkuvala with padals" without a licence issued. Therefore, so long as the petitioners are not issued any such licence, it cannot be said that the authorities cannot take action for removing such "othukkuvalas". However, the grievance of the petitioner that no licence was issued because of the directions contained in paragraph 2 of Ext.P9, deserves consideration. When there is a statutory rule permitting fishing operations and regulating the licence to be issued, no administrative instructions could be issued in violation of the said

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statutory rule. In other words, the administrative instruction being contrary to the statutory rules is bad in law. Unless and until the statutory rule is amended, the authorities are bound to issue licence in accordance with the conditions as laid down in the rules, when a person submits an application in the prescribed form. The fact that there is no prescribed printed form available with the authorities, however is not a reason to deny the right of the person to apply. If so, if the petitioners submit typed out applications in the prescribed format before the authorities concerned, the same shall be considered in accordance with the rules and to issue licence specifying the conditions, under which such licences are to be issued as per rules.

4. Accordingly, paragrah 2 of Ext.P9 prohibiting the usage of "othukkuvala with padals" for fishing is quashed. There will be a direction to the 4th respondent that in case the petitioners submit applications in the prescribed format, the same shall be considered and disposed of in accordance with Ext.P1 rules within three weeks from the date of receipt of such application.

Accordingly, W.P.(C).No.19139/2007 is allowed in part. W.P. (C).No.17961/2007 being filed against police harassment and since the

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petitioners do not possess any valid licence as of now, is dismissed without prejudice to the right of the petitioners to approach this Court, in case an occasion arises.

**P . R . RAMAN ,
Judge .**

**K . HEMA ,
Judge .**

kcv .